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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,659	11/24/2003	Peter M. Simonson	5976-23CIP	6218
30448	7590	07/25/2008		
AKERMAN SENTERFITT			EXAMINER	
P.O. BOX 3188			SWIGER III, JAMES L	
WEST PALM BEACH, FL 33402-3188				
		ART UNIT	PAPER NUMBER	
		3733		
		MAIL DATE	DELIVERY MODE	
		07/25/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/720,659

**Applicant(s)**

SIMONSON, PETER M.

**Examiner**

JAMES L. SWIGER III

**Art Unit**

3733

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-39 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 26-39 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 5/28/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

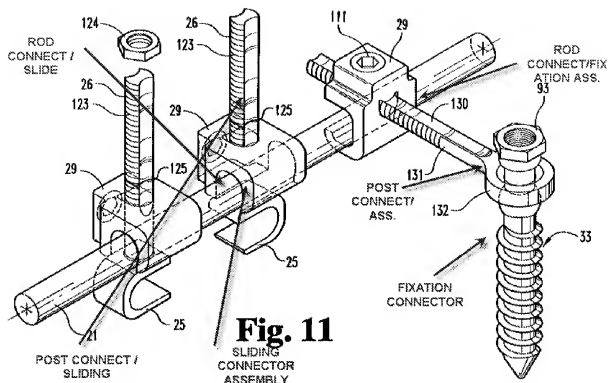
**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brumfield et al. (US Patent 5,609,592) in view of Morrison (US Patent 6,562,038). Brumfield et al. disclose a method of spinal fixation comprising the steps of providing a spinal fixation rod (21), providing at least a fixation connector assembly and a sliding connector assembly, and wherein each comprises a post and connecting member, which then also has a rod and post connecting portion. See below.



The structures permit fixation to the spinal structure (as in the facet area) and also permit sliding adjustment of the rod and also has structure (fixation screws 111) for preventing sliding movement when the desired structure is achieved during placement of the structure during surgery. It is further noted that the device is capable of being slidable relative *postoperatively*. In this regard, the rod could be placed in the connector assembly, and still be secured, but the screw 111 not be fully secured. The rod is slidable relatively and is further considered a longitudinally, rigid rod, as the rods disclosed are similar to previous rods, which are rigid and are part of the comprehensive spinal fixation system.

Brumfield et al. disclose the method of providing and performing the claimed spinal fixation system except for the device being positioned along the superior articular facet of a lower vertebrae and an inferior articular facet of an adjacent upper vertebrae for spinal fixation. It is noted, however, that Brumfield et al. does disclose that the claimed system may be utilized at various spinal levels (see abstract), which may include facet locations on the vertebrae. However, Morrison teaches a spinal fixation system that uses a rod and pedicle system on a facet joint. Morrison notes that a feature of this invention is that it allows the surgeon the option of lowering the profile of a spinal attachment system (see also Col. 2, lines 18-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to perform the method of Brumfield et al. teaching the steps of utilizing the claimed apparatus on the facet areas of the spine in view of Morrison to have better profiling in the spinal area.

#### ***Allowable Subject Matter***

The indicated allowability of claims 26-37 is withdrawn in view of the newly discovered reference(s) to the combination of Brumfield et al. and Morrison. Rejections based on the newly cited reference(s) are cited above.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 39 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER III whose telephone number is (571)272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733